

***United States Court of Appeals
for the Second Circuit***



APPENDIX

*Original w/affidavit of
mailing*

74-1947

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 74-1947

UNITED STATES OF AMERICA,

—against—

HENRY STUART BROWN,

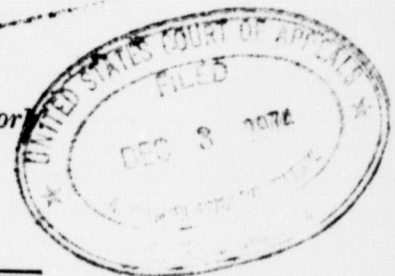
Appellee,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York



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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 -----X
4 UNITED STATES OF AMERICA, :

5 -against- :

6 HENRY STUART BROWN, :

73 CR 960

7 Defendant. :
8 -----X

9
10 United States Courthouse
11 Brooklyn, New York
12 February 1, 1974
13 10:00 a.m.

14 B e f o r e :

15 HONORABLE JACOB MISHLER, U.S.D.J.
16
17
18
19

20
21 HENRI LE GENDRE
22 ACTING OFFICIAL COURT REPORTER
23
24
25

1 APPEARANCES:

A

2

2

2 EDWARD J. BOYD, ESQ.,
3 United States Attorney for the
4 Eastern District of New York

5 BY: ROBERT CLAREY, ESQ.,
6 Assistant United States Attorney

7 FREDERICK H. COHN, ESQ.,
8 Attorney for Defendant

9
10 * * * *

1
2 THE CLERK: United States of America versus
3 Henry Stuart Brown.

4 THE COURT: An order granting order of finger-
5 prints.

6 MR. CLAREY: I have no objection to that.

7 THE COURT: The motion is granted, just submit
8 an authorization on our form F. We have the form.

9 MR. CLAREY: Do you have a name of a fingerprint
10 expert right now?

11 MR. COHN: I'm probably going to contact the
12 people.

13 If you want to have me have a person certain.

14 THE COURT: My order doesn't require it, it's
15 none of the Government's business. You just show the
16 expert or you probably have a copy of it.

17 MR. CLAREY: I don't personally have one, I'll
18 get it from the FBI lab, let's say within a week,
19 possibly two weeks.

20 THE COURT: Suppressing the use of a statement
21 allegedly obtained by defendant -- what is the statement?

22 MR. CLAREY: As I indicated in my response, I
23 may use the statement, I may not. It's not definite
24 that I'll use it. It's a statement that is rarely
25 combined -- verbal statement made by the defendant at

1 the penitentiary when confronted with the photograph
2 from the surveillance camera.

3 He indicated that he --

4 MR. COHN: He said, "I'd better get out of here."
5 That's what he said.

6 THE COURT: Is that what he said or what he
7 allegedly said?

8 MR. CLAREY: Apparently from Mr. Cohn's papers
9 there is a messiah question.

10 MR. COHN: Your Honor, I wrote to Mr. Clarey
11 for an informal discovery proceeding. My letter to him
12 and his response to me are appended to the discovery
13 motion as Exhibit A and B; to the general discovery
14 motion, not to the messiah motion.

15 THE COURT: Is that what you said by your
16 response?

17 MR. CLAREY: That's what I said by my response.
18 What is said by my letter -- my letter in response --
19 number 14. He became very nervous and agitated and
20 said, "I better get out of here."

21 I offered it only by reason of discovery. I
22 haven't planned my complete trial strategy. I'm not
23 sure I'll offer it on my direct case, it's possible
24 that I will.

25 MR. COHN: Not reaching the evidentiary case --

1 THE COURT: "I better get out of here." Is that
2 a confession?

3 MR. CLAREY: It's ambiguous, it's not a full
4 confession. It could be considered as an admission of
5 guilt or consciousness of guilty.

6 MR. COHN: It could be the same thing as saying,
7 I better get my lawyer, which is not an admission of
8 anything, but that's an evidentiary question as opposed
9 to a suppression question.

10 MR. CLAREY: We can take that up if I intend to
11 offer it on a very brief hearing.

12 THE COURT: I think so. I think there is grave
13 doubt whether it would be offered. If it is offered
14 of course it's always up to the jury to determine
15 whether any statement made is an admission.

16 MR. COHN: The thrust of this motion will be
17 whether or not the defendant was represented by counsel
18 at the time of this admission.

19 THE COURT: That doesn't matter if the Govern-
20 ment doesn't offer it.

21 MR. COHN: But the Government never told me that
22 so I feel duty bound to make a motion.

23 THE COURT: You understand, Mr. Clarey, that
24 before you offer it you advise the Court that I indi-
25 cated that I would hold a hearing and rule on the

1 admissibility of the statement, all right?

2 MR. CLAREY: Yes, your Honor.

3 THE COURT: Now, what next?

4 MR. CLAREY: You can see by my response I've
5 provided a great deal of information to Mr. Cohn. His
6 first request is what is tantamount to a list of
7 witnesses.

8 I will indicate I decline then and I decline now.
9 We are up to the general discovery motion.

10 THE COURT: Do you intend to use the testimony
11 of an informant?

12 MR. CLAREY: I would rather not say at this time
13 one way or the other. I wouldn't say whether I made
14 that determination at the present time. However, if I
15 do use the testimony of an informant, I assume that
16 under Brady versus Maryland --

17 MR. COHN: The question is when I get that
18 material, so when I come in I have to read off a piece
19 of paper and come in cold.

20 THE COURT: I will not direct the Government to
21 turn over matters that they are not required to turn
22 over; that was made very clear in United States versus
23 Perceval, very recently.

24 If urge the Government to turn over matters that
25 they are not required to turn over, that may very well

1 expedite the trial but it's the Government that will
2 make that evaluation because particularly in cases like
3 this, I think the Government has a duty to protect
4 their witnesses.

5 MR. COHN: I am sure the Court is not inferring
6 if I have a list of witnesses that I would go out and
7 do them some injury, and in my affidavit I've volunteered
8 not even to tell my clients who they are.

9 THE COURT: Why even take the chance.

10 MR. COHN: I think due process requires wherever --

11 THE COURT: Recent trials of black militants,
12 informants have psychiatric histories which may go
13 beyond the criminal record sheet and so forth. But who
14 are these informants? Very often then are part of the
15 black militant organization.

16 MR. COHN: But we don't know who they are. I
17 tried a case not long ago where the informant spoke
18 regularly with God and her mother and her conversations
19 were not privy to her but became a question on the trial.

20 THE COURT: Why should the Government take a
21 chance on having one of its witnesses injured by some-
22 one who is one of the class that you describe?

23 MR. COHN: First of all, my client is under very
24 tight security in jail. I tell the Court I won't tell
25 who they are.

1 THE COURT: I don't doubt it, but even for your
2 own protection I would say if there is that possibility
3 the lawyer shouldn't even ask for it.

4 MR. COHN: I view my obligation, one to my client
5 and two, protect his legal interest; and I think with
6 a man who has been in jail for two years who was under
7 sentence and certainly is not going to get out of jail
8 before this trial and even well after the trial, no
9 matter what the result, who cannot assist in his own
10 defense; who is on a murder case four days a week, full
11 time, I am entitled as his attorney, to every assistance
12 of the Court and the United States Attorney's Office
13 in developing information which may assist in a defense
14 in a very, very serious case.

15 THE COURT: And if the information comes as late
16 as the trial itself you will be protected in that you
17 will be given ample opportunity to investigate any
18 information you regard as new and surprising, and that's
19 the only way I know to protect the lives of the clients
20 and the witnesses.

21 MR. COHN: I don't think the life on any Govern-
22 ment witness would be endangered or my own life, or
23 Mr. Clarey's life if I was given that information.

24 THE COURT: The chances are you are right, I
25 just would rather believe that there is always the

1 other possibility.

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2 MR. CLAREY: Demand three and four, beginning
3 on page four of Mr. Cohn's papers are a little bit
4 vague.

5 I suspect he's asking for all of the FBI reports,
6 any reports on the Black Liberation Army.

7 THE COURT: You say you are entitled to know why
8 the defense was indicted.

9 MR. COHN: Late. Why he was indicted 15 months
10 later.

11 THE COURT: That goes to your motion to dismiss.

12 MR. COHN: Suppose your Honor as again has
13 happened in trials of black militants and unfortunately
14 or fortunately, I've had some contact as your Honor
15 indeed knows.

16 Suppose a member of the internal security squad
17 of the FBI takes the stand and testifies about tracking
18 down Mr. Brown and about what he may or may not have
19 done, or what he may or may not have said.

20 THE COURT: I won't allow it.

21 MR. CLAREY: I have no intention of quoting any
22 member of the internal security squad.

23 MR. COHN: Perhaps I want to question in terms
24 of a motive to lie, FBI motive to lie.

25 THE COURT: I'm going to make sure that you don't

1 make this a political issue.

2 Mr. Brown is charged with robbing a bank and
3 nothing else.

4 MR. COHN: There is an extensive file on Mr. Brown
5 somewhere in the FBI file and it's well known the
6 Court could take judicial notice that FBI agents and
7 police agents in general do not like Black Liberation
8 Army members.

9 I am entitled to go into any motivation to lie
10 that they have. I don't want to get up here in front
11 of a jury and antagonize the Court -- go on a fishing
12 expedition where I have no underlying questions of the
13 basis.

14 The only way I can investigate what's going on
15 is having some of the reports on Mr. Brown to find out
16 what they have on him, what they think they have on
17 him and go in with him in depth as to what is a lie
18 and what isn't.

19 I can't do that if I came up and asked a question
20 to an FBI agent that presupposes with a good faith
21 basis.

22 In fact the Court would have me under the cover
23 and rightfully so. I have to have something on which
24 to base those kind of questions and it's indeed
25 possible that the FBI if they are not outright lying --

1 I'm not trying to get into who is right, I don't care.
2 The question on the criminal trial is how can I explore
3 that and lay that out for a jury.

4 THE COURT: You want to make sure that that FBI
5 agent will testify and then will find out what he will
6 testify to and this might very well be heard outside
7 the hearing of the jury to determine whether the
8 defendant is attempting to bring in collateral matters,
9 I don't say you will, but there is an awful temptation
10 to do it and I'll use every effort at my command and
11 all the experience I have in keeping out matters that
12 don't belong in this trial.

13 MR. COHN: Your Honor recognizes by this colloquy
14 that this is a very sensitive area where we might
15 border on it.

16 THE COURT: It isn't. It depends on whether
17 lawyers want to make it that way.

18 MR. COHN: It's my experience, although certainly
19 I don't have the years at the bar and bench that your
20 Honor does -- that indeed police, agents, have a
21 tendency to make mountains out of molehills as far as
22 black militants are concerned, that's understating it.

23 THE COURT: You are assuming, first, Mr. Cohn,
24 that an FBI agent is going to give testimony connecting
25 this defendant to a bank robbery, that may or may not

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1 be so.

2 I can only see one area where an FBI agent will
3 and that's the fingerprint expert. He's going to say
4 because of these curves, valleys and hills, this is
5 Henry Brown's fingerprint.

6 That's the best he can say. Do you think I'll
7 allow you to ask whether Henry Brown is a black militant --

8 MR. COHN: Does your Honor think that I am not
9 going to develop an area why it took four months --

10 THE COURT: I'll stop you.

11 MR. COHN: I'm going to respectfully try.

12 THE COURT: You try and I won't allow it. That's
13 just the kind of attempt that I say does not belong in
14 this trial; testimony is technical in that -- not the
15 opportunity to bring in political considerations.

16 MR. COHN: If I may, I don't want to belabor this
17 until doomsday. I want to make it perfectly clear
18 what my political position is..

19 They suspect it three days before the robbery --
20 we know that because Mr. Clarey tells us in his letter
21 response to us they went with a picture of Henry Brown
22 to his Uncle and said, "Do you recognize this man."

23 They went to his Uncle. Henry Brown has had
24 an FBI record which is also appended to the papers --
25 eight or ten years -- and Henry Brown's records were

1 surely on file in February of 1972. And they sent
2 these fingerprints down and they come back they can't
3 identify him in June, June 5.

4 THE COURT: Who is they?

5 MR. COHN: The FBI sent these fingerprints
6 down to the fingerprint identification bureau of the
7 FBI.

8 MR. CLAREY: The fingerprints were not compared
9 to Henry Brown.

10 MR. COHN: If I may finish my argument.

11 MR. CLAREY: You are making misstatements. I
12 think it's a waste of time.

13 THE COURT: I don't allow colloquy between
14 lawyers.

15 MR. COHN: They came back on June 5, a supple-
16 mental report comes back appended to those papers
17 saying now, three months later, we tell you this is
18 Henry Brown.

19 I think I'm entitled to ask an FBI agent in
20 challenging the identity of those fingerprints, why.

21 THE COURT: Objection sustained.

22 I'll do it at the trial before you ask those
23 questions. I'll ask that we excuse the jury.

24 MR. COHN: I'll do anything to protect the
25 trial and the record.

1 THE COURT: And you'll protect the record
2 because from the way these trials go, the typical trial
3 is no matter what -- an individual that belongs to
4 black militant party is charged with -- some lawyers,
5 I don't say you, Mr. Cohn, you haven't tried a case
6 before me.

7 MR. COHN: I have indeed, some years ago.

8 THE COURT: Maybe you didn't have the moustache
9 but I will not allow every trial to be turned into a
10 political trial.

11 Sure, you are entitled to know motive for
12 testifying and surely you are entitled to know whether
13 a witness is anonymous, but that's not an excuse for
14 bringing in every emotional issue in a trial. When
15 we talk about fair trial we talk about a trial without
16 those emotions and issues.

17 MR. COHN: Your Honor --

18 THE COURT: If this were a political trial, if
19 they were charging Mr. Brown with engaging in some kind
20 of activity on behalf of the Black Liberation Army front
21 I would say, sure it belongs there, but this is bank
22 robbery.

23 MR. COHN: I just suggest to the Court most
24 respectfully, while I understand your affairs on behalf
25 of justice and the Court, you have to understand my

1 affair that we can sterilize a trial too much for a
2 jury to understand what essentially is going on in the
3 minds of some witnesses, and unfortunately that's all
4 we have.

5 I don't want to turn this into a shouting match,
6 Henry Brown and the witnesses. I want to have an
7 orderly proceeding, but I do think, and I'll strive for
8 in appropriate manner, some way to explore these
9 matters.

10 I'll ask the Court if the Court is going to
11 deny my motion to direct the U.S. Attorney to have
12 that material available unless it is called for.

13 THE COURT: I don't know what that means, have
14 that material. It's so voluminous. I don't know if
15 it's possible to get what Mr. Cohn calls all the
16 material; the material involving Henry Brown, the
17 Black Liberation Army, that might very well be every
18 investigation made by every state in the union of the
19 territories, every agency of the federal government.

20 MR. COHN: I can't account for the FBI, they
21 don't file time sheets with me. I say we have to
22 protect, for whatever the reasons, the rights of a
23 criminal defendant who faces 20 years in jail or
24 25. if that requires storing some papers in a room
25 in Court which could perhaps be better occupied or

1 otherwise occupied, I suggest that that is the
2 position we should take.

3 THE COURT: Suppose we are asking the impossible.

4 MR. COHN: Nobody knows.

5 THE COURT: You never know when something is
6 impossible.

7 MR. COHN: I stand here as a private attorney,
8 no huge staff like the FBI and U.S. Attorney's Office,
9 asking them to tell us. If he says it's impossible,
10 there is no truck large enough --

11 THE COURT: How could the Government supply
12 you with everything that you ask for?

13 MR. COHN: I am asking at the very least, the
14 Government search its files; the FBI finds things.
15 It must have a filing system; recent disclosures
16 leads one to doubt it.

17 THE COURT: Do you know what they have on the
18 Black Liberation Army, Mr. Clarey?

19 MR. CLAREY: Do I know what the FBI has? I'm
20 sure I don't know everything.

21 THE COURT: We are not talking about Henry Brown.

22 MR. COHN: I'm talking about Henry Brown and
23 the Black Liberation Army. I'm not talking about
24 everything they have on the Black Liberation Army;
25 everything they have on Henry Brown as opposed to

1 Twyman, Meyers or Gunga Din.

2 THE COURT: I don't know Twyman, Meyers or
3 Gunga Din; and Gunga Din never existed.

4 MR. CLAREY: All I have on the Black Liberation
5 Army, I have three bank robbery cases and I have
6 reports concerning those bank robbers and that's all
7 I have.

8 THE COURT: Did he steal all this money to
9 help the Black Liberation Army; is that what you
10 want to bring into the trial?

11 MR. COHN: I'm not admitting he stole anything.

12 THE COURT: If he did --

13 MR. CLAREY: This is the purpose of the Black
14 Liberation Army, I read it in the papers.

15 THE COURT: That's the kind of testimony I will
16 not permit.

17 MR. COHN: I understand that. I hope at least
18 I'm half-way competent.

19 THE COURT: The impression that I have is that
20 you are very competent.

21 MR. COHN: Your Honor recognizes that that kind
22 of testimony cuts two ways.

23 THE COURT: I don't know the purpose of your
24 motion.

25 MR. COHN: Suppose for instance it would be

1 legitimate from the information we get, I don't know,
2 I just don't know; to try and prove up that the FBI
3 had a theory just as you have enunciated, that the
4 Black Liberation Army was running around robbing banks
5 to support the revolution, they start therefore with
6 two and a half strikes.

7 THE COURT: Assume Henry Brown committed the
8 robbery -- I'll assume your assumption is all wrong,
9 they get the right man, they have the picture and
10 fingerprint, what reason does it make for arresting
11 Henry Brown.

12 MR. COHN: The problem is that the picture of
13 course, according to Mr. Clarey's disclosure to me,
14 has never been identified and the fingerprints are
15 questionable.

16 THE COURT: You may be wrong in your assumption.

17 MR. COHN: I may indeed be.

18 THE COURT: Why not wait for the trial.

19 MR. COHN: I believe I am competent, I would
20 like to have it prepared in advance. I don't think
21 it's fair for a mere mortal to sit at counsel ble
22 and have a decision affecting the balance of a young
23 man's life, if indeed there is a better way to do it
24 and I think there is; and I think that if counsel
25 respect the Court as I do, counsel should be trusted

1 at least until demonstrated otherwise with an orderly
2 investigation of material which is important to the
3 defense of a criminal defendant.

4 THE COURT: Mr. Conn, if I learned one thing
5 sitting on this bench, that the question is presented
6 on the issues that are in the case are very very
7 difficult; but questions on matters that are not in
8 the case or may not be in the case are impossible to
9 decide.

10 I don't know what is in this case.

11 MR. CONN: Neither do I and I'm his lawyer.

12 THE COURT: We do know what is in this case,
13 but I don't know that these matters are in this case.

14 I know that he's charged with robbing a certain
15 bank on a certain day, and I am ready to rule on any
16 of those issues, but I'm not ready to rule on whether
17 the defendant will be allowed to ask questions con-
18 cerning the defendants relationship with the Black
19 Liberation Front. I don't know what testimony is
20 going to be offered, and I say to you if it's only
21 the FBI agent, special agent fingerprint man who is
22 giving nothing more than expert opinion, you will not
23 be allowed to ask questions on whether he says that
24 this curve is the same as that curve on the known
25 and unknown print; that his testimony must therefore

1
2 be colored because he knows that Mr. Brown is a member
3 of the Black Liberation Front.

4 MR. COHN: I'm merely asking at this point with-
5 out waiving my prior request, that the Court ask
6 Mr. Clarey that he'll have such material available
7 if it becomes pertinent.

8 THE COURT: I ask Mr. Clarey to do his best
9 if he knows what Mr. Cohn is asking for, and I know
10 you are definite in your own mind. I don't criticize
11 you for the manner of request.

12 I just feel it's a very very difficult task
13 to find out everything. I don't think he's asking for
14 what the FBI has, it may be internal revenue, customs,
15 it may be drug enforcement administration; it may
16 be the state investigation agency.

17 MR. COHN: I'll orally limit it here that the
18 internal security division or any successor thereto of
19 the Federal Bureau of Investigation, I think it's
20 called group five and it works from directly with
21 Mr. Guy Goodwin of the Justice Department.

22 THE COURT: Now, you have it.

23 MR. CLAREY: If I may make a statement?

24 THE COURT: See if you can bring that material
25 in.

MR. CLAREY: I doubt it very much. I have

1 worked only with agents of the bank robbery squad in
2 New York; Agent Jim Murray, Joe Macartin and these
3 are the agents who investigated this series of bank
4 robberies in New York.

5 THE COURT: Do you expect an FBI agent to
6 testify to the bank robbery?

7 MR. CLAREY: Not at the present time. Something
8 may come up that would require an FBI agent to
9 testify.

10 The only one I plan to call at the present
11 time is the fingerprint expert. If there is a show
12 up of a photograph or something to that affect that
13 I'm not aware of, and then an FBI agent may testify
14 to that, eye witnesses to the bank robbery.

15 THE COURT: In the light of that statement,
16 though I would ask Mr. Clarey to bring in whatever
17 group five has on Henry Brown, I doubt very very much --

18 MR. CLAREY: I'll go so far as to ask
19 Agent Murphy if he knows about group five and if group
20 five has been involved in the case.

21 THE COURT: Ask him to bring the stuff in.
22 Mr. Cohn is going to try to bring it in and I'm going
23 to try and bring it out and I would like to have the
24 stuff here at the time, and I would like to examine
25 it and if I don't think it is producible seal it.

1 MR. CLAREY: If we could make less than a Court
2 order I'll investigate and I'll bring --

3 THE COURT: Advise me as to what is available
4 and how difficult it is to get. He's only asking for
5 group five.

6 MR. COHN: I think it's group five.

7 THE COURT: It might be another group number.

8 MR. COHN: For Mr. Clarey's benefit, I believe
9 Mr. Macartin was the head of it for some time.

10 MR. CLAREY: I know Agent Macartin.

11 THE COURT: State the name of the third person
12 alleged to be a co-actor on January 10, 1972.

13 MR. CLAREY: I'll state now on the record that
14 we do not know who the third party is with any
15 certainty. There may be as many as 20 suspects, some
16 of whom are members of the Black Liberation Army and
17 some are not. We just don't know who the third person
18 is then at this time. If I knew I probably would
19 have indicted him.

20 THE COURT: Of course, any help the Government
21 can get, it welcomes.

22 MR. CLAREY: Demand number six I would offer
23 the fingerprint material. I would like to be apprised
24 of the results of the test in an equal manner. AS
25 I advised Mr. Cohn of our results I don't think

1 Mr. Cohen should spring something on me at the trial,
2 if the fingerprint expert disagrees with my expert.

3 THE COURT: Don't you think that's fair?

4 MR. COHN: Sure. I would do that but I would
5 like to at least attempt not to deliver the name of
6 my fingerprint expert to Mr. Clarey.

7 What I saw happen in a State Court proceeding,
8 the State Court subpoenaed --

9 MR. CLAREY: If he came to the same conclusion.

10 THE COURT: I can tell you what happens in a
11 civil case. I don't know that this ever happened in
12 a criminal case, but in a civil case I have had one
13 party subpoenaed experts of the other and it was only
14 a question of fee.

15 You are not giving an expert who normally gets
16 \$500, \$1000 to testify, \$20 plus 10 cents a mile. But
17 in a criminal matter I am not sure. I don't see why
18 it shouldn't be true in a criminal matter because
19 it goes to guilt or innocence; why should the
20 U.S. Attorney in the face of the Fifth Amendment be
21 able to subpoena a -- that right is only with
22 defendants.

23 MR. COHN: And with the defendant's attorney.
24 Suppose he subpoenaed me and asked me what the
25 defendant told me?

A 24

THE COURT: That's right.

MR. COHN: This is a man supplied by me.

THE COURT: The real work product -- Pitman against Taylor.

MR. COHN: A civil case.

THE COURT: Whatever logic applies in a criminal case and vice versa.

MR. COHN: In that case I'm entitled to all his witnesses.

THE COURT: Except for the Constitutional right against self incrimination and the other rights even though that has been warded down under Harrison and Sims and Walters.

A trial is a trial and the only difference between a civil and criminal trial, except for burden of proof, are the Constitutional rights afforded defendants in a criminal trial.

MR. COHN: And I think the Constitution forbids him calling my expert.

THE COURT: Suppose a friend who didn't want to testify saw the crime committed; let's say suppose it was a relative and he subpoenaed that relative and asked the relative the question to testify. He had evidence, same thing goes for an expert. It's not the work product.

1 MR. COHN: If we have to cross that bridge we'll
2 do it on full brief.

3 THE COURT: You release the fingerprints and
4 turn them over and he does not have to give you the
5 name of his expert.

6 However, if he wants the report -- that was the
7 understanding --

8 MR. COHN: He could have the report with my
9 fingerprint expert's name masked off.

10 THE COURT: How about that?

11 MR. CLAREY: I would certainly -- of course
12 we can cross the bridge when we come to it. I would
13 like a copy of the report.

14 MR. COHN: He can have it.

15 MR. CLAREY: I would attempt to subpoena the
16 name of the expert. I would like to know the name
17 of the expert because I wouldn't use him unless he
18 agreed with my expert.

19 MR. COHN: I don't know what he's going to say.

20 THE COURT: Why don't you submit a memorandum,
21 the right to subpoena the expert of a criminal offense.
22 There is little doubt -- I don't recall researching
23 it.

24 MR. CLAREY: I'll have a memorandum ready at
25 the time.

1 MR. COHN: I can't quote Whitmore.

2 THE COURT: Now, the strange question is if you
3 know the name of the witness, the expert witness,
4 whether that cannot be extracted from you?

5 MR. COHN: If Mr. Clarey wants to muddy this
6 record with that question I'm prepared to deal then
7 with it.

8 THE COURT: I don't know whether that violates
9 the lawyer-client relationship.

10 I wrote a long opinion in that Gambini case.

11 MR. COHN: I know the opinion, and I read it
12 with great interest.

13 THE COURT: And you probably disagreed with it.

14 MR. COHN: I disagreed with parts of it.

15 MR. CLAREY: Which case was that?

16 THE COURT: That was a drug case Mr. Freid was
17 in, where Lefcourt and Katz.

18 MR. COHN: I was a member of the firm.

19 THE COURT: Did not want to disclose the name
20 of the person.

21 MR. COHN: Who paid the fee?

22 THE COURT: I had a lot of difficulty with that.
23 All I can say is that the privilege is not as broad
24 as Mr. Lefcourt and Katz argued.

25 Judge Frankel had written on it but I distinguish

Judge Frankel's case -- at any rate --

MR. COHN: That's a bridge I'm prepared to cross when we come to it.

THE COURT: By that time I shall have done a little more work on it too.

All right, we have gotten no place here so far.

MR. COHN: That's right, from my point of view; from Mr. Clarey's point of view we have gone a long way.

THE COURT: We haven't clearly resolved six.

MR. CLAREY: I thought six related to the name of the expert, not the name, but whether they would turn over the results.

THE COURT: The one thing I'm sure of they have the right to the fingerprints and I direct that they be turned over.

Now, what happens after that is something else.

MR. COHN: I will tell the Court that I will turn over the fingerprint report that I get back to the U.S. Attorney but I'll delete unless ordered to do otherwise, the name of the expert.

THE COURT: And I would take a memorandum on that. I'll not decide that on the bench.

MR. CLAREY: I have had it disclosed to me voluntarily. I didn't bother to use their chemist.

1 MR. COHN: Not be ne.

2 THE COURT: What are we going to do about the
3 claim, conversations concerning Henry Brown?

4 MR. CLAREY: I'm going to call a person in the
5 Department of Justice this afternoon or Monday and see
6 what cooperation he'll give me and I'll write to him
7 a follow up letter.

8 THE COURT: I take nothing back with me and
9 nothing is in the file other than what we talked
10 about today and I'll forget most of it.

11 MR. CLAREY: Shall we order?

12 MR. COHN: I don't see any reason why.

13 THE COURT: Criminal justice act, United States
14 Attorney orders it, send a copy to Mr. Cohn and file
15 the original.

16 I'll be looking for an early trial, April 1,
17 which I believe is a beacon date.

18 * * * *

STATEMENT TAKEN AT THE SUPREME COURT
BUILDING, BROOKLYN, NEW YORK, ON MARCH 23,
1973, COMMENCING AT OR ABOUT 1:45 P.M.,
BY ASSISTANT DISTRICT ATTORNEY DAVID FREUNDLICH.

PRESENT: Richard Goldberg, Esq.
16 Court Street 596-0287
Brooklyn, New York;

Barry Turner, Esq.
16 Court Street
Brooklyn, N. Y.

Det. William Harwood
Shield No. 2660
Major Case Squad;

Det. Roy Ardizzone
Shield No. 1739
Major Case Squad;

Det. Don Shon
Major Case Squad.

Jack Rando
Hearing Reporter.

WILLIAM JACK POLAND QUESTIONED

BY MR. FREUNDLICH:

Q. Jack, I'm Assistant District Attorney David
Freundlich in Kings County and I'd like to ask you a
couple of questions and ask you some information about
the information of Black Liberation. First, are you
represented by counsel?

A. Yes.

Q. And your counsel is present at this time?

A. Yes.

Q. And who is your attorney?

A. Mr. Goldberg and Barry Turner.

Q. Jack, are you presently incarcerated in the Brooklyn House of Detention?

A. Yes.

Q. Is that on a charge of robbery?

A. Yes.

Q. This was on an arrest made by a detective from the 13th District Robbery Squad. There's a couple of things I want to advise you before I ask you any questions. First of all, I want to tell you that I am not giving your Constitutional rights and anything you say will not be used against you. You will not be prosecuted from the information you give us. Do you understand that?

A. Yes.

Q. Number two. I am willing to make you an offer and this is the offer that I will put on the record at this time. The information you give us about the different robberies involving the Black Liberation Army specifically to an incident with a hand grenade in Queens and the killing of two policemen in Manhattan. If this information checks out to be correct, if this information also helps your testimony which you have to do is testify in the Grand Jury and the trial from this we could take your case, Jack, and we will dismiss it. In other words, you will not be prosecuted for your robbery charge and the same with the other robbery that we have discussed. Now, also

you are interested in a Diane Richardson, is that correct?

A. Yes.

Q. I believe she also appeared and was arrested for that?

A. Yes.

Q. In response to her, this is what we are going to do. I am going to check out the status of her before you testify in court or trial. I will let you know what the promise will be to her. This does not burden you to testify. You will be able to make your decision after the decision will be to her and I will put that on the record at that time. Is that all right? Do you understand that? In other words, before you have to testify, I can't make the promises now because I haven't checked it out but before you have to testify and before you decide, you will have to testify, I will put the promise on the record.

BARRY TURNER: In other words, any testimony that you will be required to give before a Grand Jury or a trial, before what happens, the matter of Diane Richardson will be discussed with you.

MR. RICHARD GOLDBERG: You are going to try to guarantee her the same disposition?

BY MR. FREUNDLICH:

Q. I am going to speak to the heads of the Bureau and will ask them if they can make the same disposition with you and I will relay them the information that she is presently working. She is making \$115.00 a week; that she has not committed any crimes since the last alleged incident. Are there any other questions?

A. After this trial is over, I leave here?

Q. After the trial is over, you can go wherever you want. You may leave the State or Country, whatever you want, whatever you wish. Any other questions, Jack?

A. No.

Q. Jack, what do you want to discuss first? Which incident?

MR. TURNER: Can I stop you for a minute?

MR. FREUNDLICH: Yes.

MR. TURNER: Have you thought about the possibility of being moved from where you are now situated?

MR. FREUNDLICH: We discussed that question.

THE WITNESS: After I testify, you know, after I go before the Grand Jury, I will be out, let out on the street, right?

MR. TURNER: Up to now, you are satisfied with everything?

THE WITNESS: Yes, 'til I testify.

MR. FREUNDLICH: I told him the people are more than willing to put him in any jail or any other facility, but if he wishes to stay in the Atlantic House, he can. If he wanted to be moved or anyone moved out of the Atlantic House of Detention.

THE WITNESS: I don't have to be moved.

MR. FREUNDLICH: Jack just asked that he does not wish to be taken out of the jail and the people will respect that wish.

MR. GOLDBERG: After his testimony before a Grand Jury, he will be free 'til trial.

MR. FREUNDLICH: But he must stay within the confines of New York and will probably have to report so we'll know if he's in New York.

BY MR. FREUNDLICH:

Q. Jack, you want to go right from the beginning how you met the people?

A. It started about December of '72, that's when I just -- when I got out of prison about two or three -- '71, that's '71, that's where I met Henry Brown and we were going around together, then he introduced me to Woody Green. This is just before Christmas. Then we started hanging out together and I used to go to a house on Carroll Street where I met, not met him, but I knew him all the time. His name was --

Q. Thomas McNary ? (phonetic spelling.)

A. Right, up the corner. I don't know the street. It's right off the corner. It's an apartment building on Carroll Street or ^{10th} Montgomery Street. This is a place where all of us used to meet, Montgomery and Utica where this girl Debbie lived at. We all used to go up there and, you know, in December, we didn't have any money. That's when we stuck the bar.

Q. What bar was that?

A. The Lindy's Bar. That's when, you know, we took the officer's gun and badge and the car was taken.

Q. Who did that stick-up?

A. Mo, Woody Green and Brown Then after that --

Q. Where did you go after that day? This was when, December of what?

A. I don't remember, to tell you the truth, the date.

Q. Where did you go after that stick-up?

A. We went to the house on Reid and Bainbridge.

Q. Was that Woody's wife Brenda's house?

A. I didn't know it was his wife's at the time.

Q. Was she home when you came home after that stick-up?

A. No, she went there when we split the money up. Then I went my way and they went their way.

Q. How much did you get, about?

A. We all got about maybe a hundred, or so dollars a piece.

Q. Did anyone get shot in this holdup?

A. No.

Q. Did Woody Green or Brown want to shoot anyone?

A. Yes, they wanted to shoot the officer's because he was an officer.

Q. What prevented them from shooting the officer?

A. I told them that ain't no good. That would only bring the law down on us, so we left.

Q. Did you take any jewelry from anyone?

A. Yes, some things were the girls had on.

Q. Who did you give that jewelry to?

A. I threw it away and, you know, being that it came out in the papers that what had happened and the police car was taken and his car was taken.

Q. Was this cop in uniform?

A. No.

Q. How do you know he was a cop?

A. We took his badge and gun from him.

Q. What happened to his shield?

A. We stayed cool. We didn't keep his shield.

Q. Who took his shield?

A. Woody Green. After that, you know, we just left, took the car and left.

Q. What kind of a car was that?

A. A Mustang, because they didn't know how to drive so took the car, left and split the money up. Then we went out in our own way. I didn't see him no more 'til Christmas. That's when they, Henry Brown said about a bank stick-up. He asked me if I wanted to go. This is -- but before that, I think they were all discussing robbing a bank in Queens, you know, that's when Jackson, a little short guy, he, Brown and Woody Green and the two girls.

Q. What two girls was that?

A. Debbie and some other girl.

Q. Debbie, Green and that ugly girl?

A. Yes.

Q. Pat?

A. She just ugly. She had an African name or something.

DET. HERRMANN: Would you know the small fellow that was with Jackson?

Would you know him if you seen him?

THE WITNESS: I couldn't say because it was, you know, just a flash.

DET. HERRMANN: And you didn't hear a name?

THE WITNESS: No.

DET. HERRMANN: Could it have been Reese?

THE WITNESS: I couldn't say.

BY MR. FREUNDLICH:

Q. Where were all these people?

A. Up on Montgomery Street.

Q. In Debbie Green's place?

A. Yes, that was supposed to be the hangout then and they were planning to rob a bank over there and they asked me, you know, that I wanted to get down with it. At first I said, yeah because McGraw (phonetic) that was the one that was setting the thing up and he said four of us were supposed to do it. Then it turned out later it was about eight of us altogether before I looked around and so I told him no. That's when they started talking about that grenade stuff, so I told him no. So they went, you know, and did the next day.

Q. Who was that?

A. Brown One.

Q. [That's Marvin Harvey Brown]

A. Yes, and Woody Green. I think Jackson did the driving on that one because I didn't see him until afterwards.

(McQuary)
Blood called me up and said everything went wrong, you know, that they panicked when they saw the police car or something. And they drove up, off and they said this is what McQuary (phonetic) is telling me. He said that they panicked. Then he, they started to drive over and the police car was chasing them and that's when Blood threw the, you know, the grenade out the window. That's when he said, because he was the only one that was showing him how to use weapons. Woody Green, there was about 8 of them, I wasn't there.

Q. Who else?

A. I don't know. The girl wasn't supposed to be involved.

Q. Who was the other guy?

A. I'm telling you the ones who were planning it, you know. Blood called me the next day and said everything went wrong, you know, so, you know, as far as I know, the ones that were there, were supposed to be the ones on the job, you know, so they told me, you know, that they panicked and all that kind of stuff and he threw the grenade out the window and it blew up, you know, the police car and they got away. They came back over to Brooklyn and Blood said he was going to go to St. Louis so I don't know whether he didn't go then but he didn't go. He just stayed around, stayed around. Then after that, sometime in January, Brown saw the bank on Dallas Avenue and Throop, I think Quarry and he asked me if I wanted to go on that and I told him,

you know with only four people there was supposed to be this guy Jackson who was supposed to be the driver but for some reason, he didn't come over so we had to go out and get a car. So we stole a car.

Q. What kind of a car was that?

A. It was a rented red car. I don't know the date, the actual date that it was done on but we did it there with the ski mask and they were there.

Q. Who is they?

A. Woody Green, Brown and Omar.

Q. That's Melvin Kennedy?

A. Yes.

Q. Where was McQuary?

A. I went down there and they went in and they robbed it and, you know, Woody Green supposedly got the guard and so they came back out and we left and went right back.

Q. Did Henry Brown leave something there?

A. Yes, a .38 pistol.

Q. Whose gun was that?

A. The officer's.

Q. The officer's gun that was robbed in Lindy's Bar?

A. Yes.

Q. Did he just forget the gun?

A. I don't know. He just said he laid the thing down while they were scooping the money up and he jumped back

across or somehow out of there and left it.

Q. Did anyone get shot there?

A. No.

Q. Where did you go after that?

A. To Dainbridge and Reid.

Q. Was that to Brenda's house?

A. I don't know.

Q. What happened when you got there?

A. We counted the money up.

Q. How much was it?

A. \$13,000.00 or \$12,000.00. We all counted the money up and we stayed there. Stayed out of the street for a while, just stayed there.

Q. Who was there, was Brenda there?

A. Yes.

DET. HERRMANN: Who was there counting the money?

THE WITNESS: Me, Brown, Woody Green, Omar and his wife, I guess.

MR. HERRMANN: The heavy set girl, the ugly one?

THE WITNESS: Yes.

MR. HERRMANN: Was Blood there?

THE WITNESS: No, just the one that did the bank job and Brenda. There was some young boys there too, but they

were in the house.

DET. ARDIZZONE: How old, teen-agers?

THE WITNESS: Yes, about 18 or 19 or 20 and we split the money up.

MR. HERMANN: How much did you get of it?

THE WITNESS: About \$3,700.00 or \$3,800.00.

BY MR. FREUNDLICH:

Q. What did you do with the car?

A. Parked it at about two blocks up from Reid and Bainbridge. This was straight up. We got out and parked it there and left, walked back down to the house on Reid and Bainbridge. After that we split the money up and that's when they were saying that they were saying that Al -- they were going to do with their money, like that's when they said they had this, I don't know if it was this organization or what, you know, but they had to put so much money aside for this organization or something. I don't know what it was for. I never went to any of their meetings. So that's when they put their money aside and we just --

DET. HERMANN: Did they take any of your money for this organization?

THE WITNESS: No. Then they started talking and laughing, you know, and

listening to the radio, to see if it was on the radio. They talked and talked and talked, you know, until we figured it was safe. Then all of us left but before that Woody Green -- I don't know if they cop was shot or not but Woody Green had another officer's gun, you know. All he said, you know, that this gun came from an officer, you know, but I don't know if he was shot or not. He didn't say at that time. Then, you know, as I was in the house, they had said about -- they told me they had been into a lot of things that I didn't know about. So I didn't bother to ask what it was. The only thing they told me about was that they had shot three people in a Hebrew National on Broadway. Omar got shot in the butt so they said they went in there and shot them people up. So, that's all.

BY MR. FREUNDLICH:

Q. Who's they?

A. Omar, Evans, Woody Green, but they told me about that and that's all.

Q. Did they tell you that they killed the guy that ran that place?

A. No, they just said, you know, they shot inside the place.

Q The guard?

A. Yes, they shot him in the face and in the ear or something like that but they didn't say anybody was killed. They said they went in there and shot them up and left.

Q. They say why?

A. Yeah, because one of them shot Omar. It was a thing up there about drugs. I'm not sure but this is what they said. They said that Fogger's (phonetic) son was hiring certain people to sell drugs in there or something like that and, you know, they were against drugs. You know, and so him -- and Omar was shot in the butt. That's what I heard.

Q. Where did Omar get treated?

A. I don't know. I think he was in the hospital and he signed himself out and just walked out.

Q. What hospital?

A. I don't know. After all that, you know, after we had that, we didn't see each other, you know, and they would call me or I would call them, you know, and you know to see if anyone --

DET. HERRMANN: Who would call you?

THE WITNESS: Blood or either Woody Green.

DET. HERRMANN: Do you know any of the phone numbers?

THE WITNESS: No.

DET. HERRMANN: Have you got any of them listed home?

THE WITNESS: I had them but after that I threw them away.

DET. HERRMANN: You have any addresses?

THE WITNESS: The only two places I went to on Bainbridge and Montgomery Street. I know Henry Brown was living some place close by but I didn't never went around there because it was easier to come from where I lived that to go right up on Montgomery Street. I was a couple of blocks, that's how we were contacting each other and they would call and I would call them, you know. So, time after that, that's how I went 'til I just, you know, I just tried to break away because I wanted to do something else.

(Off the record.)

BY MR. FREUNDLICH:

Q. Back to this mini-job. When you went back to Brenda's house, who did the counting of the money?

A. She did, the girl and, you know, we all was counting. She was counting, you know, and after it was all split up, we had equal share and they said, leave some money for her because she had counted the money, you know? Then all we did was sit around.

Q. How much did she get?

A. About a hundred or something dollars, \$200.00. Then we sat around and listened to the radio to see if it was on the radio. We waited about two hours, three hours sitting around doing nothing. Really smoking reefer.

Q. You stayed up in that room then?

A. Yes, after that we all --

DET. HERMANN: With the money, they were all bills on the floor.

THE WITNESS: On the bed.

DET. HERMANN: You took your bills, the other took their bills, did Woody or did his wife take his bills?

THE WITNESS: He took his own money.

You know, everybody gave her something for counting the money, you know, but he picked his own money up and was counting himself, over. So, we sat around and smoked reefer and that was it.

Listening for it on the radio. .

DET. HERRMAN: You never heard it, though?

THE WITNESS: No, we waited and waited.

It was in the New York Times in the Amsterdam or something after that.

DET. HERRMAN: That was the quietest bank job you ever heard of, right?

THE WITNESS: Yeah.

DET. ARDIZZONE: You left there after the bank job, right, you went home?

Tjen what was the next time you saw these people or heard from them?

THE WITNESS: After that, you know, being that they had left the gun in the bank, you know, inside that it could be traced back to us for the bar sticker so I went to New York the next day, you know, over there in the hotel, over there on 42nd Street. For about two or three days and nobody came in my house so I came back. After that, you know, they called back and forth, back and forth to see if anyone was arrested and nobody was arrested so we started mingling again. Then, you

know, after that, you know, after I had got the money, I went and found out how to get some dope and went to selling dope. And, you know, as I started doing that, I started to ease away from them. You know, because it takes a lot of time to sell dope and they would still call, and call and call and then, you know afterwards, I got a call from them and they asked me did I want to do something. You know, that's when they went over there to the Village. I told them, you know, no, because I was doing this.

BY MR. PROSDOLICH:

Q. Who called you?

A. Woody Green asked me did I want to do something. In other words, they were going to go over there and stick up somebody or something, you know.

Q. How soon after the bank job was that?

A. I don't know, a month, you know, something like that. I'm not sure of the time but they called me and asked me did I want to go over there. They were supposed to be a dope selling that they were going to take off for money, you know and I told him, no. So, after that, I went down on DeKalb and Westrand. It was about 8:00 or 9:00

o'clock that night, that's when it was all over the news
that, you know, the cops had got shot.

Q. Do you know when that happened?

A. I think a Friday night.

Q. It happened on January 27, is when that shooting
happened, okay, so when the bank job happened on January
the 10th, it wasn't a month.

A. I said --

DET. ARDIZZONE: It was about two
weeks.

THE WITNESS: Well, you know, I thought
it was about a month but they had
called me anyway about going over
there to stick up something so I
heard over, you know, over the radio
and television and bar and all that
kind of stuff, you know, and I was
walking with my cousin, you know, at
this time.

BY MR. FREUNDLICH:

Q. What's your cousin's name?

A. Charles Lee, and once I heard it, you know, I said,
that sounds like Brown and them. You know, because I
know they had that automatic weapon, you know.

Q. Which automatic weapon was that?

A. It looks like a rifle, you know, and it has a double clip on it upside down, you stick it in this way and you pull it back like this and once the whole thing fires, you know, take it out and turn it over and put it back in this way and it can fire again. So I said to him that sounds like Brown and then so and, you know, we didn't pay it no mind right then. Then, they called me sometime, you know, during that week.

DET. HERMANN: Who called you?

THE WITNESS: Woody Green and he asked me if I had any money. I told him I had a few dollars and he asked me, he wanted some money to borrow some money. I went around there on Dainbridge, you know, and they were there, Brown, Omar and what's his name, Omar, Brown and Woody Green.

BY MR. FREUNDLICH:

Q. Was his wife there, the woman?

A. No.

DET. ARDISZONE: Blood?

THE WITNESS: No, Blood wasn't there.

* They said they had killed some pigs,
you know, that they were going to get
out of town, you know, and I lent them

some money and I left. I said, you know, I know what happens, you know, cop gets killed especially like how they killed them. They said they will come --

DET. HERRMANN: Did they say how?

DET. ARDIZZONE: What we want to know exactly, try to the best of your recollection what happened when you went to Bainbridge Street? Who was there, who said what? Anything at all that you remember?

THE WITNESS: It wasn't like I say.

All he said, "We killed some pigs."

DET. ARDIZZONE: The number of them said, "We killed some pigs?"

THE WITNESS: No, it was from the said we killed some pigs, you know. I really didn't ask them, you know, how you did it and all that kind of stuff like that.

DET. HERRMANN: They didn't volunteer any of this?

THE WITNESS: No, they just said that they were going to get out of town.

DET. HERRMANN: Had they said where they killed them?

THE WITNESS: No.

DET. HERMANN: They say how?

THE WITNESS: No, none of them say.

All they said, we killed some pigs and
they wanted to leave, you know, and
they wanted money from me.

DET. HERMANN: How much did you give
them?

THE WITNESS: About \$200.00. That's
all I had at the time, you know.

DET. ARDIZZONE: They say where they
were going?

THE WITNESS: St. Louis. Brown said
he was going to St. Louis because
McQuary, after the bombing of the police
car he had said that he was going there.
But he laid around, laid around, you
know.

BY MR. FREUNDLICH:

Q. Did they say who else was with them when the
police got killed?

A. No, it wasn't a thing I'm going to tell you. They
don't talk a lot, you know, they don't say very much.
They might say, well, you know, I shot such and such and
it's ended right there. If you asked about it, they say,
"Way the fuck you ask me about this?" So, I don't know.

They just said, you know, Woody, you know, they, you know, they didn't come down in detail how it happened.

DET. ARDIZZONE: Who else was there?

THE WITNESS: I don't know.

DET. ARDIZZONE: Was Brenda there?

THE WITNESS: Nobody there but me.

DET. ARDIZZONE: Where was this?

THE WITNESS: In the living room. Right there in the living room.

BY MR. FREUNDLICH:

Q. Did they have that gun there that you were talking about?

A. No.

DET. ARDIZZONE: Did you see any weapons at all?

THE WITNESS: They had the pistol.

They had a .38, I think.

DET. ARDIZZONE: Who had that?

THE WITNESS: All three of them had guns but one was, I think, Omar had that long gun so long looking like a Smith & Wesson and Brown had a .38, I think, I'm not sure what he had. And Omar had a .38, you know. But as far as you know, the automatic

weapon, I didn't see that.

BY MR. FRIEDLICH:

Q. How did Donald Meyers fit into this?

A. The gun, the automatic weapon, now, he told me this himself.

Q. Donald Meyers told you this?

A. Yes, he was under investigation about the rifle that was supposed to be used in the cop killing. And he asked me, could that do anything to him for that. I told him, you know, they might. I don't know, you know, but he said he was under -- being investigated because you know, he had given a gun or somekind of a way they had gotten the gun from him so, you know, that's about it.

Q. Did he give him the gun?

DET. ARDIZZONE: When did he speak to you, Donald Meyers?

THE WITNESS: Afterwards.

DET. ARDIZZONE: After you spoke to them at Bainbridge Street, which was a few days after it happened.

THE WITNESS: During the middle of the week.

DET. ARDIZZONE: Then Donald Meyers saw you a few days later?

THE WITNESS: It was sometime after that, I think, it was almost, you know, I can't remember the exact day but it was on Marcy and Clifton Place. He saw me over there because I was doing something over there, you know, selling dope and he saw me over there. He told me about -- he was under investigation or they had picked him up because he had given them the gun and I asked them. He asked could they convict or try. I told him I don't know, conspiracy maybe but I don't know.

DET. ARDIZZONE: He was talking about a rifle or automatic weapon? A handgun? What was he talking about?

THE WITNESS: He said they're investigating me because I had a gun. Some rifle, I don't know. Some rifle or automatic weapon or something, you know, that he had got from some place or bought it or purchased something that, you know, given to them.

DET. ARDIZZONE: He admitted giving it to them?

THE WITNESS: Yeah. that's what he only

told me they were investigating him for giving, because it was his rifle. In other words, or his automatic weapon, or whatever he had, you know, they were investigating him because of this and this is all. He asked me could he be prosecuted for that?

DET. ARDIZZONE: But did he in fact, tell you that he did give them the gun?

THE WITNESS: I'm only telling you what the police are investigating. That's what he said.

DET. ARDIZZONE: He did not say in fact, I gave them the gun? Did you think that he gave the gun if that's what, he meant?

THE WITNESS: I know he gave them the gun.

DET. ARDIZZONE: How do you know?

THE WITNESS: Because, you know, see, you can't really say, you know, what you know, anyway you can't really say, you know, that he gave him the gun, but, you know, through people talking and, you know, the way he is talking.

DET. HERRMANN: He done this before?

THE WITNESS: No, this is the first time when he used to be with Blood and I guess Blood found out that he had a gun or something. He also showed him how to use it.

BY MR. FREUNDLICH:

Q. When you went over to Bainbridge, and you saw Woody and Melvin?

A. Yeah?

Q. Kerner and Brown, can you think of anything else they might have said. It's important.

A. You know, over there, they just, you know, like I told you before they just said this that they had been involved in a lot of things, and you know, they said that I don't know about it. That's when they actually told me about the shooting, you know, there with that Europe thing.

DET. HERRMANN: With Foggy's son?

THE WITNESS: Yes, before they were stealing, you know, dope.

DET. HERRMANN: Did they know that you were in it? That you were in the pusher's business?

THE WITNESS: I'm not sure whether they know or not. I had told them before, you know, that I was going

to sell some dope.

DET. HERRMANN: And they never thought of knocking you over?

THE WITNESS: No, no, because see, they thought actually that I was going to stay with them, see, you know, they didn't know that I was going to pull away from them.

DET. HERRMANN: In other words, you weren't worried about them knocking you over?

THE WITNESS: No.

DET. ARDIZZONE: Who else do you believe was involved in the shooting even though the three were present when they made that statement but who else do you feel --

BY MR. FREUNDLICH:

Q. Or that you heard from the street?

A. I didn't, you know.

DET. ARDIZZONE: Who do you think would have been there?

THE WITNESS: The only possible person that I can think of, you know, that would have been there would have been

Blood.

BY MR. FREUNDLICH:

Q. That's Thomas McQuary?

A. Right, that was there most close, you know, regular people like with Jackson or one of them, you know, one of these people grew up together. So that's the only possible thing that I know.

Q. What did you hear from the street about that shooting?

A. I heard they were crazy. I know Brown, you know, I didn't understand, you know, being that you just did something, why go off and do this, you know, it's just saying, I want to go to jail, or you know. That's what I didn't understand what they told me about this. Can't mess with that no more but they also, you know, said that they would never give up.

Q. What was that thing you were talking about in the Bronx, before, the cop being put in the trunk of a car?

A. They were supposed to be a garage over there. It was supposed to be an attendant told them. I don't know exactly who was with him. I know McQuary was there but they were supposed to be an attendant. I think Robert or a garage, or something and the attendant said, that's the officer and they took his gun and all that and his badge and put him in the trunk of his car, someplace in the Bronx.

DET. ARDIZZONE: When was this?

THE WITNESS: This was before we even, you know, they said just that one time being that we had gotten a car out of a rented garage, a stolen car. That's when Blood told me about it.

DET. HERRMANN: You were with him on the car that was stolen?

THE WITNESS: Yes.

DET. HERRMANN: Where did you take that out of?

THE WITNESS: The rented place on Church.

DET. HERRMANN: Do you know anything about the Malsey Street where they stole the car out of the garage?

THE WITNESS: Woody Green had showed me a garage over there where was supposed to steal cars if we couldn't find no car no place else.

DET. ARDIZZONE: Where was that?

THE WITNESS: The garage on Malsey Street, you know, but I told him, no that was in the neighborhood, to go to someplace else.

DET. HERRMANN: All this time who was

driving you?

THE WITNESS: I only drove on one thing.

DET. HERRMANN: But you say you were driving around with Woody?

THE WITNESS: No, I didn't drive away.

DET. HERRMANN: He showed you?

THE WITNESS: We walked, we walked to Church Avenue and took the bus straight on down because I knew about the rented place.

BY MR. FREUDLICH:

Q. Who, out in the street, would know about these things or where they were about these things?

A. The only one that I can say that's out in the street that can possibly tell you some of their hangouts or something like that, would be the two gunners.

DET. HERRMANN: Which two? Debbie Green and the ugly one? Brenda?

THE WITNESS: That's her name, Brenda. That's the only one that could tell you because they were, you know, man confess to the woman, you know that.

BY MR. FREUDLICH:

Q. Did Brenda go down on anything?

A. Which one is Brenda?

Q. Chubbst?

A. Not with me.

Q. Did Debbie Green go down on anything with you?

A. You see I actually did the bar and the bank with
them, you know.

DET. HERMANN: That was just to get
you started in business?

THE WITNESS: Yes.

DET. HERMANN: Now, you seen a couple
of weeks later after you saw the three
of them when was the next time you saw
any of them?

THE WITNESS: I don't see any of them
no more.

DET. HERMANN: Never again?

THE WITNESS: No more.

DET. ARDIZZONE: Anyone that you
mentioned in the past?

THE WITNESS: None of them after I saw
them, after they had told me about the
cops. After I left, no more. In
other words, Woody Green called me
about two or three weeks before he
got killed, but I wouldn't answer the

phone, my mother was answering the phone really.

DET. ARDIZZONE: Could Woody drive?

THE WITNESS: No.

DET. ARDIZZONE: Could Oran drive?

THE WITNESS: No.

DET. ARDIZZONE: These are the only ones that you know of. Any of them from this group that you know of drive?

THE WITNESS: No.

BY MR. FREUNDLICH:

Q. How about Blood?

A. Yes.

Q. You didn't go out on that Queens job, did you?

A. No.

DET. HERMANN: To your knowledge, was there a woman in on that job?

THE WITNESS: Yes. I don't know about names, like I said, she never came over there to the house on Bainbridge.

BY MR. FREUNDLICH:

Q. Some women you didn't see?

A. I never saw her.

DET. HERMANN: How do you think they got in contact with them?

THE WITNESS: So I don't think she was any of their girlfriends not unless it was Omar because it was, I never seen him with a girl but Brown and Woody, unless it was Jackson's girlfriend or one of them.

BY MR. FREUNDLICH:

Q. How did you know a woman went down on that

A. Because I read that in the newspaper.

DET. SHEA: Did they ever talk about this woman?

THE WITNESS: They said she had a lot of heart.

DET. SHEA: Anything else with her? How old she was or what her name or nickname is?

THE WITNESS: You know, how they talk. She just say, you know, this girl, she got a lot of heart and all this kind of stuff. We can use her.

BY MR. FREUNDLICH:

Q. Getting back when you went over on Bainbridge after the Foster and shooting, Brown said, we killed the police, right?

A. Yes.

Q. What did Murray say, Char?

A. He didn't actually say anything, you know, they just, you know, just stood there. They didn't say anything, just said, we got to get out of here. Now, you know, that's how they talk, funny, you know.

DET. ARDIZZONE: Det Brown did say was?

THE WITNESS: Yes.

DET. ARDIZZONE: And you assume it was everyone present besides yourself?

THE WITNESS: You know, like when you hanging out with someone and they say we, that means if I say we, you know.

DET. HERRMANN: You say you have all these telephone numbers at one time.

Whose phone numbers did you have?

THE WITNESS: The one that the two places, Woody Green and Debbie's apartment.

BY MR. FREUNDLICH:

Q. Who is Debbie's man?

A. I don't know. She was supposed to be Blood's.

DET. HERRMANN: But everyone was banging her?

THE WITNESS: As far as I know.

BY MR. FREUNDLICH:

Q. Have you seen her around?

A. No, but I think, if you question her she might be able to tell you more that was coming to that house, Jackson and the little guy.

Q. But we have to catch her first?

A. Maybe not, because she's there all the time at night smoking reefer and drinking wine.

DET. SHEA: Where is she living at on Bainbridge?

THE WITNESS: She was living on Montgomery.

DET. SHEA: Is she still there?

THE WITNESS: I stopped going around there completely.

DET. SHEA: What apartment, do you know?

THE WITNESS: It was the 4th, 5th, you know, I forget the apartment but I know you only go up the landing about two or three times and it's like, you come out and it's right on the side.

DET. ARDIZZONE: When Brown showed you a gun and he said this is from a policeman, when was that?

THE WITNESS: Wait a minute. You got that mixed up. Woody Green showed me a .38 that belonged to an officer.

DET. ARDIZZONE: When did he show you that .38?

THE WITNESS: That's when we were counting the money.

DET. ARDIZZONE: At Bainbridge Street?

THE WITNESS: Yeah, that's all he did say. Wait a minute. That was wrong. It was before that. It was in the morning, like we all got up early that morning and I came in, Omar came in. Woody was already there and Brown came in, and now, you know, they tried to make sure everybody had a gun. You know, they gave me a long -- it looked like a Smith & Wesson and Woody Green had the officer's gun and Brown had it in the bar, his gun and Omar had the .38 or something.

DET. ARDIZZONE: When was this, before the stick-up?

A. THE WITNESS: Yes.

DET. ARDIZZONE: The morning of the stick-up?

THE WITNESS: Yes.

DET. ARDIZZONE: And he said this gun was a cop's gun?

THE WITNESS: Yes.

DET. ANDERSON: Did he make any other reference other than that?

THE WITNESS: No.

DET. HERLMAN: That was beside the gun that was taken in the bar?

THE WITNESS: Yes.

DET. HERLMAN: In other words, there were two cops' guns?

THE WITNESS: Yes.

DET. HERLMAN: Is there anything you can tell us in regard to the shooting?

THE WITNESS: No, I told you everything I know.

DET. SHEN: On Union Street, did you ever visit anybody on Union Street, in the 20,000 numbers? Do you know if anyone, any of these four people that you spoke about? Do any of them live, or did they live on Union Street?

THE WITNESS: I don't know if it was on Union Street, but I know Brown, like I said before, that Brown lived close to Montgomery and Union. It's within walking distance.

BY MR. FREUNDLICH:

THE WITNESS: Yes.

DET. ARDESSINI: Did he make any other reference other than that?

THE WITNESS: No.

DET. HERLMANN: That was beside the gun that was taken in the bar?

THE WITNESS: Yes.

DET. HERLMANN: In other words, there were two cops' guns?

THE WITNESS: Yes.

DET. HERLMANN: Is there anything you can tell us in regard to the shooting?

THE WITNESS: No, I told you everything I know.

DET. SHIDA: On Union Street, did you ever visit anybody on Union Street, in the 20,000 numbers? Do you know if anyone, any of these four people that you spoke about? Do any of them live, or did they live on Union Street?

THE WITNESS: I don't know if it was on Union Street, but I know Brown, like I said before, that Brown lived close to Montgomery and Utica. It's within walking distance.

BY MR. FRAUNDEIGH:

Q. All right, I'll contact your attorney. I'll speak to you. I won't hurt you. The only thing I don't know is Diane, and that I will let you know, okay?

A. Yes.

MR. FREUNDLICH: No further questions.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK

ss

DEBORAH J. AMUNDSEN

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 2nd day of December 19 74 he served a copy of the within

GOVERNMENT'S APPENDIX

by placing the same in a properly postpaid franked envelope addressed to:

Frederick Cohen, Esq.

640 Broadway

New York, New York 10012

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Sworn to before me this

2nd day of December 19 74

OTEA S. MORGAN
Notary Public, State of New York
N.Y. 24-4501956

Qualified in Kings County
Commission Expires March 30, 1975